# SIXTEENTH ANNUAL REPORT

# 1982-83

**ONTARIO LAW REFORM COMMISSION**

**Ministry of the Attorney General**

The Ontario Law Reform Commission was established by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

DEREK MENDES DA COSTA, Q.C., LL.M., S.J.D., LL.D., *Chairman*

H. ALLAN LEAL, Q.C., LL.M., LL.D., D.C.L., *Vice Chairman*

HONOURABLE RICHARD A. BELL, P.C., Q.C.

WILLIAM R. POOLE, Q.C.

BARRY A. PERCIVAL, Q.C.

M. Patricia Richardson, M.A., LL.B., is Counsel to the Commission. The Secretary of the Commission is Miss A.F. Chute, and its offices are located on the Fifteenth Floor at 18 King Street East, Toronto, Ontario, Canada M5C 1C5.

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Ontario
Law Reform
Commission

To The Honourable R. Roy McMurtry, Q.C.
Attorney General for Ontario

Dear Mr. Attorney:

We have the honour to present the Sixteenth Annual Report of the Ontario Law Reform Commission, for the period April 1, 1982 to March 31, 1983.

## INTRODUCTION

This Report is concerned with the activities of the Commission during the period April 1, 1982 to March 31, 1983. We are pleased to report that the year was a most productive one for the Commission.

During the year, the Commission submitted to the Attorney General three Reports. Two of these Reports were Parts IV and V of the Commission's *Report on the Enforcement of Judgment Debts and Related Matters*. These two Parts, together with Parts I, II and III, submitted earlier, complete the Commission's five Part Report on this important and formerly neglected topic. The third Report was the *Report on Powers of Entry*, which builds upon the pioneering work of the Royal Commission Inquiry into Civil Rights in Ontario, popularly known as the "McRuer Commission".

It is, perhaps, appropriate that the Commission's research had its genesis in the Report of the McRuer Commission. The Honourable James C. McRuer, O.C., LL.D., a former Chief Justice of the High Court of Ontario, was the first Chairman of the Commission, and was Vice Chairman until 1977. Thereafter, he served as a part-time member, and it is with a deep sense of loss that we record his final retirement from the Commission on June 1, 1982. The Commission's sentiments are more fully expressed in the Minutes of the July meeting of the Commission, the relevant extract of which is attached to this Report as Appendix A.

As in the past, the Commission has continued to receive suggestions for additions to its programme from members of the judiciary, the legal profession and the public. The Commission appreciates this interest in its work, and wishes to extend its thanks to all those who have taken the time to assist it in this way.

## THE PROGRAMME: REFERRED MATTERS

Section 2(1)(*d*) of the *Ontario Law Reform Commission Act* requires the Commission to inquire into and to consider any matter relating to any subject referred to it by the Attorney General. During the past year, one new project, Human Artificial Insemination and Related Matters, was referred to the Commission. The Commission has already reported with respect to all other References it has received.

**PROJECTS IN PROCESS**

***Human Artificial Insemination and Related Matters***

On November 5, 1982, the Commission received a Reference to report on the legal issues relevant to the practice of human artificial insemination and related matters. The following extract from the Letter of Reference contains the Terms of Reference:

> I wish to request that the Ontario Law Reform Commission inquire into and consider the legal issues relating to the practice of human artificial insemination, including 'surrogate mothering' and transplantation of fertilized ova to a third party. I would be pleased to have the Commission report on the range of alternatives for resolution of any legal issues that may be identified.
>
> In conducting your study, I would be grateful if you would include the following considerations within the scope of the review:
>
> 1. The legal status and legal rights of the child and the safeguards for protecting the best interests of the child.
> 2. The legal rights and legal duties of each biological parent.
> 3. The legal rights and legal duties of the spouse, if any, of each biological parent.
> 4. The nature and enforceability of agreements relating to artificial insemination and related practices.
> 5. The nature and enforceability of agreements respecting custody of the child.
> 6. The legal rights and liabilities of medical and other personnel involved in performing artificial insemination and other related practices.
> 7. The legal procedures for establishing and recognizing the biological parentage of children born as a result of these practices.
> 8. The applicability of present custody and adoption laws in such cases.
> 9. The availability of information to identify the child and the parties involved.
> 10. Such medical and related evidence as may have a bearing on the legal issues raised in these cases.
>
> I am certain that the Commission will appreciate the deep importance of these issues for the persons involved, particularly the children, and accordingly in the interests of these children, make the report available as soon as possible.

In view of the social importance of this Project, it was decided to place an Announcement, containing the Terms of Reference and inviting the submission of briefs, in each daily newspaper published in the Province and in the Ontario Reports. In addition, a copy of the Announcement was circulated to a broad group of persons and bodies in Ontario that the Commission felt might be interested in its research, including the following: religious organizations; hospitals; medical schools; children's aid societies; the College of Physicians and Surgeons of Ontario; the College of Family Physicians of Canada; and the Ontario Branch of the Canadian Bar Association. We are pleased to state that the Commission has now received some 35 briefs, and we are much obliged to all those who contributed so willingly to our study. Their comments will, indeed, be carefully considered by the Commission.

In response to the Attorney General's request to report as soon as possible, the Commission forthwith commenced work on the Project and was extremely fortunate to secure the services of Professor Bernard M. Dickens of the Faculty of Law, University of Toronto, as Project Consultant. A Research Design, prepared by Professor Dickens, has been approved by the Commission and research has commenced. Further, the Commission has decided to appoint an Advisory Board to assist it in the many difficult and sensitive decisions that it will have to make in the course of its research.

## THE PROGRAMME: PROJECTS INITIATED BY THE COMMISSION

Under its founding statute, the Commission may inquire into and consider any matter relating to reform of the law. Accordingly, during the last year, the Commission commenced one project, dealing with Time Sharing, on its own initiative.

### (a) COMPLETED PROJECTS

#### *(i) Enforcement of Judgment Debts and Related Matters*

During the past year, the Commission submitted to the Attorney General Parts IV and V of its *Report on the Enforcement of Judgment Debts and Related Matters*. The completion of these two Parts marks the end of several years of study in a hitherto neglected but increasingly vital area of the law.

The five Parts of the Report examine in considerable detail the many facets of the law relating to the rights of debtors and unsecured creditors after a money judgment has been obtained. In Parts IV and V, as in the first three Parts, the Commission is animated by a desire to clarify, modernize, and rationalize the law. Part IV deals with two related areas of the law of

enforcement: prejudgment remedies and voidable transactions. With a notable exception in the case of *Mareva* injunctions, the law respecting these two topics, which are linked by a concern with the rights of creditors to prevent their debtors from frustrating the enforcement of future or existing judgment debts, has essentially been static for many generations. With respect to prejudgment remedies, the *Absconding Debtors Act*, for example, offers inadequate protection against unscrupulous debtors. Accordingly, in Part IV the Commission recommends the repeal, with one exception, of all existing provisional remedies and their replacement by a single new, more comprehensive, prejudgment remedy, designed to protect creditors while safeguarding the interests of debtors. While creditors would not be frustrated by the restrictive provisions of the present law, prejudgment attachment would be available only after, *inter alia*, the creditor has established under oath the existence of one or more of the proposed grounds for attachment and a strong *prima facie* claim against the debtor, and that his application for prejudgment attachment is made *bona fide* for the sole purpose of obtaining security for the enforcement of any future judgment in the main action against the debtor.

Insofar as prejudgment arrest is concerned, the Commission proposes the abolition of this remedy. However, the Report recommends the retention of section 24 of the *Family Law Reform Act*, dealing with absconding maintenance and support debtors.

With respect to voidable transactions legislation — namely, the *Fraudulent Conveyances Act* and the *Assignments and Preferences Act* — the Commission reviews critically the mass of statutory provisions and occasionally conflicting common law rules. In lieu of the present regime governing fraudulent conveyances — whereby a conveyance may be set aside where the transferor intended to prejudice his creditors — the Commission recommends that a conveyance should be voidable where the effect of the conveyance, rather than the intent of the debtor, was to prejudice his creditors. In this manner, fraudulent behaviour that does not in fact affect creditors will be left to the criminal law, while behaviour that is prejudicial to creditors will be actionable, irrespective of the intent of the debtor.

With respect to fraudulent preferences, the Commission recommends the creation of a new regime, distinguishing arm's length and non-arm's length preferences, and designed to further the general principle of equality among creditors. Unlike arm's length preferences, non-arm's length preferences would be set aside where the preference has had the effect of prejudicing creditors, irrespective of the debtor's intent.

In the context of both fraudulent conveyances and fraudulent preferences, however, saving provisions are proposed by the Commission to protect certain types of transaction.

In Part V of the *Report on the Enforcement of Judgment Debts and Related Matters*, the Commission examines three separate topics: the distribution of the proceeds realized from one or more of the enforcement remedies considered in Parts II, III, and IV; postjudgment arrest of a defaulting debtor; and the liability of sheriffs, creditors, and creditors' solicitors in the enforcement of judgment debts. Again, these areas have remained basically unchanged for a considerable period of time.

In chapter 2 of Part V, the Commission recommends the retention of a system of rateable distribution of enforcement proceeds, subject to certain justifiable priorities in favour of maintenance or support creditors and wage creditors, but not, however, in favour of the Crown. In chapter 3, the Commission proposes, as a general proposition, that postjudgment arrest should not be available for simple non-payment of a money judgment. However, it should continue to be available for non-payment of a maintenance or support order. In the case of such an order, the Commission recommends that, as an aspect of the court's contempt jurisdiction, the court should be empowered to order the arrest and imprisonment of a defaulting debtor who, although able to pay the judgment debt, refuses to do so. But such an order should be made only while no other practicable remedy for the enforcement of the debt is available. Finally, the Commission proposes that the court should be entitled to order the postjudgment arrest of any debtor who is about to abscond or who has dealt with his property to the prejudice of his creditors.

In chapter 4, the Commission attempts to clarify the murky legal position respecting the liability of sheriffs, and deals as well with the position concerning the duties and liability of creditors and their solicitors. With respect to the liability of sheriffs, the Commission basically recommends, among other things, that where the sheriff complies with the new statutory and regulatory provisions proposed in the Commission's Report, he should be protected from liability. Other recommendations delineate the duties of the sheriff in various circumstances, having regard to previous Commission proposals.

In addition, the Commission makes proposals protecting persons who obtain inaccurate information from the sheriff. For example, the Commission recommends that the class of claims that may be compensated by the new assurance fund proposed in Part III should include a claim by any person prejudiced by the actions of a sheriff in erroneously providing a clear certificate respecting writs on file at the sheriff's office.

With respect to the relationship between the sheriff and the creditor, or his solicitor, the Commission recommends that the sheriff should be precluded from requiring or accepting from any person an indemnification or any other similar agreement designed to save the sheriff harmless from liability in respect of his enforcement activities, except an agreement

covering all or part of the anticipated costs and expenses to be incurred by him in the enforcement of a judgment debt.

While the Commission generally recommends no change in the law governing the liability of creditors and their solicitors, it does recommend that the class of claims that may be compensated by means of the proposed new assurance fund should include claims by a plaintiff who is successful in an action arising out of a wrongful act by the sheriff and who, as a result of the financial status of the person held to be liable in that action, is unable to obtain full payment of the money judgment rendered in his favour against such person.

In the General Introduction to the Report, appearing in Part I, the Commission emphasized the deleterious effects of the present enforcement system on sheriffs, creditors, debtors, and others involved in the enforcement of judgment debts. The deficiencies of this system have been decried by many persons over the years and deserve a response. The thrust of our proposals has been to substitute for the existing miscellany of often frustrating and confusing rules a new enforcement regime designed to serve more effectively and fairly the people of Ontario.

*(ii) Powers of Entry*

The Commission has submitted to the Attorney General its *Report on Powers of Entry*. This Report includes a Draft Bill for a *Powers of Entry Act*. In its Report, the Commission considers powers to enter on land that are conferred on municipal and provincial officials by Ontario legislation, as well as the activities of such officials once an entry has been effected. The Report is also concerned with intrusive powers exercisable in relation to chattels, but does not embrace powers of entry granted to private individuals.

The Report begins by acknowledging that the power to enter on land without the consent of the occupier is a necessary consequence of supervisory and regulatory responsibilities undertaken by government in the public interest. Accordingly, the fundamental issue addressed by the Report is the manner in which the public interest in effective governmental regulation may be reconciled with the interest in individual privacy.

The Commission examines the existing law respecting the exercise of powers of entry. In its review, the Commission considers the common law background against which the legislative powers that are the subject of the Report have been enacted, as well as some features of existing statutory powers of entry, and the impact of the *Canadian Charter of Rights and Freedoms*.

As the Report points out, the subject of powers of entry and other intrusive powers has been considered by other law reform bodies.

Accordingly, the Report contains a discussion of the proposals of the Royal Commission Inquiry into Civil Rights in Ontario, the Manitoba Law Reform Commission, the Law Reform Commission of Australia, the Law Reform Commission of Western Australia, and the New Zealand Public and Administrative Law Reform Committee.

In chapter 3, the Report outlines the practice respecting powers of entry. The discussion is based on information gathered during interviews that were conducted with two groups: the recipients of the powers of entry, and representatives of organizations whose members were subject to the exercise of these powers. Interviews with the former group concerned such matters as the use of force in effecting entry, the production of identification, the giving of notice, and the degree of supervision of the exercise of powers of entry. Interviews with the latter group were directed to discovering whether there have been instances of abusive conduct in the exercise of these powers. The Commission concludes first, that public officials have taken the initiative in instituting measures designed to ensure individual privacy — for example, by requiring the presentation of identification — and secondly, that serious abuse resulting in controversy and public discussion has not occurred.

While the Commission finds no evidence of abusive behaviour in the exercise of powers of entry, it concludes that there is a potential for such abuse inherent in the breadth of the existing legislative powers and in the absence, in many cases, of external supervision of their exercise. Based on this conclusion, the Commission recommends the enactment of a new *Powers of Entry Act* that would establish certain mandatory minimum standards to govern the exercise by public officials of all powers of entry and all intrusive powers contained in statutes, regulations and by-laws in Ontario.

The proposed *Powers of Entry Act* comprises four elements. First, it sets out a code of minimum standards that must be followed by public officials in effecting entry on land and exercising intrusive powers in relation to chattels. Secondly, the Act addresses the circumstances in which force may be employed to effect an entry against the wishes of the person in possession of the place or thing in respect of which the power of entry is exercised. Thirdly, the Act creates a remedy for breach of its provisions or the provisions of any other Act, regulation, or by-law that apply to the entry, by establishing a civil action for damages. In addition, the Act provides that, in the case of a breach, a court, upon application, may make an order directing compliance with the Act or other relevant legislation, or may make such other order as it thinks fit. Finally, in order to facilitiate the development of more detailed policies to govern the exercise of powers of entry, the proposed Act empowers the Lieutenant Governor in Council to make regulations respecting the manner in which powers of entry must be exercised and reported.

**(b) PROJECTS IN PROCESS**

***(i) The Law of Trusts***

During the past year, the Commission has given priority to the preparation of the *Report on the Law of Trusts* and the draft revised *Trustee Act*. Since work was resumed on the project last summer, substantial progress has been made; to date, three-quarters of the Report and Draft Bill have been approved by the Commission. The Commission has been ably assisted in this endeavour by the Project Director, Professor D.W.M. Waters, of the Faculty of Law, University of Victoria, and by L.R. MacTavish, Esq., Q.C., former Senior Legislative Counsel. The Commission anticipates that the Report and revised *Trustee Act* will be submitted to the Attorney General in the autumn of this year.

***(ii) Administration of Estates of Deceased Persons***

The past year has witnessed steady progress in the Administration of Estates of Deceased Persons Project. The objective of this project, which originally formed part of the Commission's Law of Trusts Project, is a new *Administration of Estates Act*. The proposed Act would bring together, in a revised form, portions of the *Trustee Act*, the *Estates Administration Act* (formerly *The Devolution of Estates Act*), the *Surrogate Courts Act* and Rules, and a number of common law doctrines dealing with estate administration. Work on the draft *Administration of Estates Act* is well under way and, following consideration of a number of outstanding issues, the writing of the draft final Report will commence.

The project is being directed by Professor George Alexandrowicz of the Faculty of Law, Queen's University. During the course of the project, the Commission has been fortunate to have the active and able assistance of an Advisory Committee of experts in estate administration, constituted under the chairmanship of Malcolm Archibald, Esq., Q.C.

***(iii) The Hague Convention Concerning the International Administration of the Estates of Deceased Persons***

The International Convention initially formed a separate Commission project. However, as the general question of the administration of estates of foreign decedents is being considered as part of the Administration of Estates of Deceased Persons Project, the Commission has decided to deal with the Convention, and the question whether it should be given effect in Ontario, in its *Report on the Administration of Estates of Deceased Persons.*

***(iv) Basic Principles of Land Law***

During the past year, the Commission resumed discussion of three

substantial research papers, dealing with reform of basic principles of land law, prepared during the course of the project. Unfortunately, with the receipt of the Reference on Human Artificial Insemination and Related Matters, it has been necessary to defer, once again, consideration of this important area of the law.

### *(v) The Law of Mortgages*

The second stage of the three stage Law of Mortgages Project has been completed. During the second stage, nine research papers were prepared covering the following topics: (1) proper disclosure to borrowers and potential borrowers; (2) the mortgage as an ongoing relationship; and (3) mortgage remedies. These research papers and the recommendations of the Research Team have been considered by an Advisory Committee on the Law of Mortgages consisting of representatives of the legal profession, institutional lenders and consumer groups. The Advisory Committee was established by the Commission under the chairmanship of the Project Director, Barry J. Reiter, Esq.

Early in 1983, the Commission considered a Research Report prepared by the Project Director, containing general recommendations for reform of the law of mortgages. These recommendations were based, in turn, upon the recommendations of the Research Team and the comments and views expressed by members of the Advisory Committee. On the basis of the Project Director's Research Report, the Commission tentatively approved general directions for reform.

Work has begun on the third and final stage of the Law of Mortgages Project, which will consider the way in which the general directions for reform tentatively approved by the Commission can best be effected. Specific recommendations for reform of the law of mortgages will be considered early in 1984.

### *(vi) Time Sharing*

In October, 1982, the Commission added to its programme a Project on Time Sharing. Time sharing occurs where a number of persons own, or have the exclusive right to use, a piece of property for a specified period of time. The project will examine all aspects of the present law governing time sharing in Ontario and other jurisdictions, with a view to ascertaining whether there is a need in Ontario for enabling and regulatory legislation. In order to obtain the benefit of the experience of those concerned with the operation of this area of the law, the Commission has invited the submission of briefs.

In the late fall of 1982, a member of the Commission's legal staff attended two conferences on time sharing. These conferences, which were

held in Houston, Texas and Calgary, Alberta, provided the Commission with an opportunity to obtain valuable information concerning the law of time sharing and to meet a number of persons distinguished in the time share field, including lawyers, government officials, and representatives from private industry and from the Resort Timeshare Council of Canada and the National TimeSharing Council of the American Land Development Association. The Commission has been most fortunate to have had the support and assistance of these persons during the preliminary stage of the project, and we wish to extend to them our sincere thanks and appreciation.

The Time Share Project will be conducted in two stages. In the first stage, a comprehensive working paper will be prepared by a member of the internal legal staff, which will include a discussion of the following topics: the concept and forms of time sharing; the present law in Ontario and in order jurisdictions; problem areas in the law; and alternative proposals for reform. It is anticipated that the first stage of the project will be completed by the autumn of 1983.

In the second stage, the proposals and materials produced during the first stage will be evaluated by an Advisory Committee, which will include members of the legal profession, government officials, and other knowledgeable interested parties. It is expected that this stage of the project will be completed during the coming year. Thereafter, the working paper, together with the views of the Advisory Committee, will be submitted to the Commission for consideration.

### *(vii) Law of Contract Amendment*

During the year under review, the Commission was able to devote a considerable amount of attention to this project. Among the issues examined were the following: the doctrine of unconscionability; the doctrine of good faith; illegal contracts; minors' contracts; contractual capacity; penalty clauses and relief from forfeiture of monies paid; waiver of conditions; and contractual remedies.

It is expected that, in the coming year, the Commission will complete its consideration of the remaining topics — misrepresentation and the doctrines of mistake and frustration — and will commence preparation of its final Report.

As in the past, we continue to be well served by the joint Project Directors, Professors Jacob S. Ziegel and Stephen M. Waddams, both of the Faculty of Law, University of Toronto.

### *(viii) The Law of Standing*

The Law of Standing Project involves an examination of the question

whether the law governing the right of a private individual to commence an action in respect of public rights should be broadened. Unfortunately, during the past year, little progress was made on the project. Because of the need to complete several projects that predate the Law of Standing Project, it was decided to defer consideration of the many important issues raised in a research paper on standing previously prepared for the Commission. It is hoped to resume study of the law of standing as soon as time and personnel permit.

### *(ix) Contribution Among Wrongdoers*

This project, directed by Professor John M. Evans of Osgoode Hall Law School, York University, is concerned with the law governing the allocation of responsibility for loss where the same injury is caused by the conduct of two or more persons, and with contributory negligence, a topic that also involves apportionment of loss. During the past year, the Commission considered a research paper dealing with contributory negligence, prepared by Professor J.B. Dunlop, of the Faculty of Law, University of Toronto. In addition, work commenced on the preparation of the draft final Report. Due to other commitments, it will not be possible to consider the draft Report until the spring of 1984. At that time, it will be necessary also to prepare draft legislation embodying the Commission's recommendations.

### *(x) Remedies for Wrongful Intentional Interference with Goods*

In our last Annual Report, we announced the addition of this project to the Commission's programme. As we stated, the project will be conducted in two stages.

The first stage of the project — the research study — has been completed under the able direction of the joint Project Directors, Professor George R. Stewart of the Faculty of Law, University of Windsor, and Professor Ralph L. Simmonds of the Faculty of Law, McGill University. Research papers have been prepared on the following topics:

(1) specific relief remedies, including replevin, detinue, injunctions, and declarations;

(2) self-help remedies, including recaption of chattels and contractual rights;

(3) damage remedies, including trespass, conversion, and interference with a reversionary interest;

(4) analogous remedies in the civil law, based on a consideration of the law of Quebec, France, and Germany; and

(5) an empirical study of the incidence of the remedies and the patterns of preference, based on court records, a survey of sheriffs' offices,

and data provided by consumer and credit organizations and sales and financial institutions.

The second stage of the project will involve an evaluation by an Advisory Board of the proposals and materials produced during the first stage. In consultation with the joint Project Directors, the Advisory Board has been appointed by the Commission. The Board is composed of persons who possess expert knowledge of the law and practice relating to the subject matter of the project, and we most sincerly appreciate their willingness to assist the Commission in this way.

It is expected that the second stage of the project will be completed during the summer of 1983, and that a Research Report will be submitted to the Commission during the coming autumn.

## FUTURE PROGRAMME

As in the past, the Commission was obliged during the period under review to reassess its priorities and to defer important projects in the hope of bringing to completion other projects of long standing. While the Reference on Human Artificial Insemination and Related Matters will occupy a large portion of our time and resources during the coming year, we shall do all within our power to maintain progress in our other important projects and to return to those that have been deferred at the earliest opportunity.

## GENERAL ACTIVITIES

For law reform to be meaningful, it is necessary to maintain communication with the practising members of the legal profession. In this way, members can be informed of the Commission's research and, in turn, the Commission can receive their comments and advice. In particular, the Commission is concerned to elicit suggestions for reform of the law from members of the practising Bar. Accordingly, the Chairman welcomed the opportunity to speak of the work of the Commission at meetings of the following county and district law associations: the Frontenac County Law Association; the Nipissing District Law Association; and the Northumberland County Law Association. So, too, the Chairman addressed a meeting of the Officers and Trustees of the Carleton County Law Association, and of the Directors of The Advocates' Society. We very much appreciate the efforts of those involved in making these visits both successful and enjoyable.

The Chairman and Counsel, on behalf of the Commission, attended a meeting of the Canadian Law Reform Agencies at Montebello, Quebec, in August, 1982. This meeting provided an opportunity to strengthen ties with these agencies, and to exchange information with their representatives.

Immediately following the meeting, the Chairman and Vice Chairman represented the Commission at the Sixty-fourth Annual Meeting of the Uniform Law Conference of Canada, which was also held at Montebello. We would mention that, as in its *Report on Sale of Goods*, the Commission recommended, in its *Report on Products Liability*, that the Uniform Law Conference of Canada should be asked to explore the possibility of a *Uniform Products Liability Act*. This issue was discussed by the Conference on several occasions, and, during the 1982 meeting, the matter was referred to the Ontario and Manitoba Commissioners — and to any other jurisdiction that wished to participate — to report in 1983. Since this meeting, the Chairman and Vice Chairman have engaged in preparatory matters relating to the Committee.

In the year under review, the Chairman was called upon to represent the Commission on many occasions. These included an address to the members of the staff of the Ontario Police College concerning the function and purpose of the Ontario Law Reform Commission, and a meeting with the Ontario Branch, Canadian Bar Association Committee on Law Reform and Legislation. Further, the Chairman attended Council Meetings of the Canadian Bar Association-Ontario, and was the moderator of a panel organized by the Canadian Student Pugwash, University of Toronto, co-sponsored by the Medical Students' Society, entitled "Surrogte Motherhood: Shaping Public Policy for Ontario".

As in past years, we have been pleased to receive colleagues from other Canadian law reform agencies, including W.H. Hurlburt, Esq., Q.C., Director, The Institute of Law Research and Reform, Alberta, and Professor Clifford H.C. Edwards, Q.C., Chairman, Law Reform Commission, Manitoba. We were also pleased to welcome to our offices Professor Stephen M. Cretney, Commissioner, The Law Commission, England; A.S. Hodge, Esq., Secretary, The Law Reform Commission of Hong Kong; and Professor Patrick M. Schultz, of Université de Lille III, Paris.

## ACKNOWLEDGMENTS

Attached to this Report are three Appendices relating to the activities of the Commission. Appendix A sets out a formal change in the membership of the Commission during the past year. Appendix B consists of a list of Reports prepared and submitted by the Commission since its inception in 1964, together with a table indicating the extent to which legislation concerning its proposals has been enacted.

Appendix C to the Report contains a list of the officers and permanent staff of the Commission. The Commission regrets the departure during the past year of its Administrative Assistant, Mrs. J.A. Brown. To Mrs. Brown we extend our sincere thanks and best wishes for success in the future. The

position of Administrative Assistant was filled by Mrs. Beverley Woodley, formerly Secretary to the Commission's Administrative Officer, and for many years a valued member of the administrative staff. To Miss A.F. Chute, our Administrative Officer, and to all members of the administrative staff, we wish to express our deep appreciation of their efforts on our behalf.

May we also express our sincere thanks and appreciation to you, Mr. Attorney, and to the officers of your Ministry, for the interest and assistance afforded the Commission in its endeavours.

All of which is respectfully submitted.

Derek Mendes da Costa
Chairman

H. Allan Leal
Vice Chairman

Richard A. Bell
Commissioner

William R. Poole
Commissioner

Barry A. Percival
Commissioner

March 31, 1983

## APPENDIX A

Extract from the Minutes of the Ontario Law Reform Commission, July 6, 1982.

The following resolution, presented by the Honourable R.A. Bell, P.C., Q.C., and seconded by H. Allan Leal, Q.C., LL.M., LL.D., D.C.L., was passed by unanimous vote:

> When he retired as Vice-Chairman in 1977, the Commission endeavoured to present by resolution its assessment of the career of the Honourable James Chalmers McRuer as a jurist and a law reformer, and we venture to repeat it:
>
> > 'On the occasion of the retirement of the Honourable James Chalmers McRuer, O.C., LL.D., as Vice-Chairman, the members of the Ontario Law Reform Commission wish formally to record their deep sense of obligation to him for his unparalleled service to the cause of law reform.
> >
> > His encyclopedic knowledge of law and social philosophy, his scholarly wisdom, his persistent and tenacious search for truth, his unswerving dedication to the betterment of life for his fellow citizens, his incredibly youthful outlook and vigour, are qualities which have earned him a unique place in the legal history of our Province and among reformers throughout the common law world.
> >
> > Those who have been privileged to be his colleagues for more than 12 years on the Ontario Law Reform Commission pay him this humble and respectful tribute.'
>
> Mr. McRuer remained as a part-time member of the Commission to assist in the completion of the Projects on the Law of Trusts and the Enforcement of Judgment Debts and Related Matters, and his help has been of the same superlative quality for which he is noted.
>
> On June 1, 1982, he submitted his final resignation to the Premier of Ontario and, to our deep regret, he will no longer be associated with this Commission, of which he was the first Chairman and for which he set the style.
>
> The Commission acknowledges once again its indebtedness to the qualities of the great gentleman it knows as 'Jim McRuer'. We recognize that, in addition to his work as a great jurist, whose numerous reported decisions refresh the common law, and to his unexcelled and original work as a law reformer, he was the Chairman of the Royal Commission Inquiry into Civil Rights, the Report of which has led to such innovative statutes as the Statutory Powers

Procedure Act and the Judicial Review Procedure Act, which were original in Ontario and which have been emulated in many common law jurisdictions.

We end on a personal note. Our former colleague is about to attain the age of 92 years. Many of his greatest contributions to jurisprudence in the common law world have been made in the eighteen years since he resigned from the position of Chief Justice of the High Court of Ontario at the age of 74 years. Intellectual brilliance and achievement, he has proved, are not restricted by age.

He cannot expect to emulate Methuselah, but his colleagues wish him the opportunity to make the late Sir William Mulock appear like a youngster and to a long continuance of his present physical and intellectual vigour.

## APPENDIX B

## REPORTS OF THE ONTARIO LAW REFORM COMMISSION

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 1. | Report No. 1 [The Rule Against Perpetuities] | February 1, 1965 | *The Perpetuities Act, 1966*, S.O., 1966, c. 113 |
| 2. | Report No. 1A: The Perpetuities Act, 1965 [Supplementary Report on the Rule Against Perpetuities] | March 1, 1966 | *do.* |
| 3. | Report No. 2 [The Wages Act: Assignment of Wages] | March 3, 1965 | *The Wages Amendment Act, 1968*, S.O. 1968, c. 142 |
| 4. | Report No. 3 on Personal Property Security Legislation | May 28, 1965 | *The Personal Property Security Act, 1967*, S.O. 1967, c. 72 |
| 5. | Report No. 3A on Personal Property Security Legislation | May 18, 1966 | *do.* |
| 6. | Report on The Evidence Act: Admissibility of Business Records | February 16, 1966 | *The Evidence Amendment Act, 1966*, S.O. 1966, c. 51, s. 1 |
| 7. | Report on The Mechanics' Lien Act | February 22, 1966 | *The Mechanics' Lien Act, 1968-69*, S.O. 1968-69, c. 65 |
| 8. | Supplementary Report on The Mechanics' Lien Act | May 26, 1967 | *do.* |
| 9. | Report on the Proposed Extension of Guarantor's Liability on Construction Bonds | May 30, 1966 | See *The Mechanics' Lien Amendment Act, 1975*, S.O. 1975, c. 43<br>*The Ministry of Transportation and Communications Creditors Payment Act, 1975*, S.O. 1975, c. 44<br>*The Public Works Creditors Payment Repeal Act, 1975*, S.O. 1975, c. 45 |
| 10. | Report on The Execution Act: Exemption of Goods from Seizure | December 9, 1966 | *The Execution Amendment Act, 1967*, S.O. 1967, c. 26 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 11. | Report on The Law of Condominium | March 6, 1967 | *The Condominium Act, 1967*, S.O. 1967, c. 13 |
| 12. | Report on the Basis for Compensation on Expropriation | September 21, 1967 | *The Expropriations Act, 1968-69*, S.O. 1968-69, c. 36 |
| 13. | Report on the Limitation Period for Actions under The Sandwich, Windsor and Amherstburg Railway Act, 1930 | January 8, 1968 | *The Sandwich, Windsor and Amherstburg Railway Amendment Act, 1968*, S.O. 1968, c. 120 |
| 14. | Annual Report 1967 | January 15, 1968 | Not applicable |
| 15. | Report on Certain Aspects of the Proposed Divorce Legislation Contained in Bill C-187 | January 19, 1968 | *Divorce Act*, S.C. 1967-68, c. 24, s. 26 |
| 16. | Report on the Proposed Adoption in Ontario of The Uniform Wills Act | February 5, 1968 | *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40<br>See *The Registry Amendment Act, 1978*, S.O. 1978, c. 8, s. 1 |
| 17. | Report on The Protection of Privacy in Ontario | September 10, 1968 | See *The Consumer Reporting Act, 1973*, S.O. 1973, c. 97 |
| 18. | Report on Section 183 of The Insurance Act | October 3, 1968 | — |
| 19. | Report on Trade Sale of New Houses | October 4, 1968 | See *The Ontario New Home Warranties Plan Act, 1976*, S.O. 1976, c. 52 |
| 20. | Interim Report on Landlord and Tenant Law Applicable to Residential Tenancies | December 10, 1968 | *The Landlord and Tenant Amendment Act, 1968-69*, S.O. 1968-69, c. 58 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 21. | Report on Limitation of Actions | February 3, 1969 | See *The Highway Traffic Amendment Act (No. 2), 1975*, S.O. 1975, c. 37<br>*The Fatal Accidents Amendment Act, 1975*, S.O. 1975, c. 38<br>*The Trustee Amendment Act, 1975*, S.O. 1975, c. 39 |
| 22. | Annual Report 1968 | April 7, 1969 | Not applicable |
| 23. | Report on the Age of Majority and Related Matters | June 3, 1969 | *The Age of Majority and Accountability Act, 1971*, S.O. 1971, c. 98 |
| 24. | Report on the Status of Adopted Children | June 3, 1969 | *The Child Welfare Amendment Act, 1970*, S.O. 1970, c. 96, s. 23 |
| 25. | Report on Family Law, Part I: Torts | November 4, 1969 | *The Family Law Reform Act, 1978*, S.O. 1978, c. 2 (partial implementation) |
| 26. | Report on Section 20 of The Mortgages Act | March 12, 1970 | *The Mortgages Amendment Act, 1970*, S.O. 1970, c. 54, s. 1 |
| 27. | Report on Family Law, Part II: Marriage | April 6, 1970 | *The Civil Rights Statute Law Amendment Act, 1971*, S.O. 1971, c. 50, s. 55 (partial implementation)<br>*The Marriage Act, 1977*, S.O. 1977, c. 42 |
| 28. | Annual Report 1969 | April 20, 1970 | Not applicable |
| 29. | Report on Actions Against Representatives of Deceased Persons | November 30, 1970 | *The Trustee Amendment Act, 1971*, S.O. 1971, c. 32, s. 2 |
| 30. | Report on the Coroner System in Ontario | January 25, 1971 | *The Coroners Act, 1972*, S.O. 1972, c. 98 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 31. | Report on Sunday Observance Legislation | February 26, 1971 | *The Retail Business Holidays Act, 1975*, S.O. 1975 (2nd Session), c. 9 |
| 32. | Report on Land Registration | March 23, 1971 | *The Assessment Amendment Act, 1972*, S.O. 1972, c. 125, s. 2<br>*The Retail Sales Tax Amendment Act, 1975*, S.O. 1975, c. 9, s. 7<br>*The Motor Vehicle Fuel Tax Amendment Act, 1975*, S.O. 1975, c. 10, s. 5<br>*The Tobacco Tax Amendment Act, 1979*, S.O. 1979, c. 17, s. 4<br>*The Corporations Tax Amendment Act (No. 2), 1979*, S.O. 1979, c. 89 |
| 33. | Annual Report 1970 | March 31, 1971 | Not applicable |
| 34. | Report on The Change of Name Act | May 31, 1971 | *The Change of Name Amendment Act, 1972*, S.O. 1972, c. 44 |
| 35. | Report on The Mortgages Act, Section 16 | June 18, 1971 | — |
| 36. | Report on Development Control | September 28, 1971 | *The Planning Amendment Act, 1973*, S.O. 1973, c. 168, s. 10 |
| 37. | Report on Powers of Attorney | January 11, 1972 | *The Powers of Attorney Act, 1979*, S.O. 1979, c. 107 |
| 38. | Report on Occupiers' Liability | January 11, 1972 | *The Occupiers' Liability Act, 1980*, S.O. 1980, c. 14 |
| 39. | Report on Consumer Warranties and Guarantees in the Sale of Goods | March 31, 1972 | — |
| 40. | Report on Review of Part IV of The Landlord and Tenant Act | March 31, 1972 | *The Landlord and Tenant Amendment Act, 1972*, S.O. 1972, c. 123 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 41. | Annual Report 1971 | March 31, 1972 | Not applicable |
| 42. | Report on the Non-Possessory Repairman's Lien | October 4, 1972 | — |
| 43. | Report on the Administration of Ontario Courts, Part I | February 26, 1973 | See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31<br>*The Judicature Amendment Act (No. 2), 1977*, S.O. 1977, c. 51, s. 9 |
| 44. | Annual Report 1972 | March 31, 1973 | Not applicable |
| 45. | Report on the Administration of Ontario Courts, Part II | May 23, 1973 | See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31 |
| 46. | Report on Family Law, Part III: Children | September 25, 1973 | *The Child Welfare Amendment Act, 1975*, S.O. 1975, c. 1 (partial implementation)<br>*The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation)<br>*The Children's Law Reform Act, 1977*, S.O. 1977, c. 41 (partial implementation)<br>See *Children's Law Reform Amendment Act, 1982*, S.O. 1982, c. 20 |
| 47. | Report on The Solicitors Act | September 28, 1973 | — |
| 48. | Report on Motor Vehicle Accident Compensation | November 6, 1973 | — |
| 49. | Report on the Administration of Ontario Courts, Part III | December 17, 1973 | *The Judicature Amendment Act, 1975*, S.O. 1975, c. 30 (partial implementation)<br>See *The Administration of Courts Project Act, 1975*, S.O. 1975, c. 31 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| | | | *The Small Claims Courts Amendment Act, 1977*, S.O. 1977, c. 52 (partial implementation) |
| 50. | Report on Family Law, Part IV: Family Property Law | February 8, 1974 | *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation) |
| | | | *The Family Law Reform Act, 1978*, S.O. 1978, c. 2 (partial implementation) |
| | | | See *The Land Titles Amendment Act, 1978*, S.O. 1978, c. 7 |
| | | | *The Registry Amendment Act, 1978*, S.O. 1978, c. 8 |
| 51. | Report on Family Law, Part V: Family Courts | February 8, 1974 | See *The Unified Family Court Act, 1976*, S.O. 1976, c. 85 |
| | | | *The Children's Probation Act, 1978*, S.O. 1978, c. 41 (partial implementation) |
| 52. | Annual Report 1973 | May 6, 1974 | Not applicable |
| 53. | Report on the International Convention Providing a Uniform Law on the Form of the International Will | July 3, 1974 | *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40, s. 42 |
| 54. | Annual Report 1974 | March 31, 1975 | Not applicable |
| 55. | Report on Family Law, Part VI: Support Obligations | April 18, 1975 | *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40 (partial implementation) |
| | | | *The Family Law Reform Act, 1978*, S.O. 1978, c. 2 |
| 56. | Report on Mortmain, Charitable Uses and Religious Institutions | February 27, 1976 | *The Religious Organizations' Lands Act, 1979*, S.O. 1979, c. 45 |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| | | | *The Anglican Church of Canada Act, 1979*, S.O. 1979, c. 46 |
| | | | *The Registry Amendment Act, 1979*. S.O. 1979, c. 94, s. 17 |
| | | | *Charities Accounting Amendment Act, 1982*, S.O. 1982, c. 11 |
| | | | *Mortmain and Charitable Uses Repeal Act, 1982*, S.O. 1982, c. 12, s. 1(1) |
| 57. | Report on Landlord and Tenant Law | March 15, 1976 | *The Residential Tenancies Act, 1979*, S.O. 1979, c. 78 (partial implementation) |
| 58. | Report on the Law of Evidence | March 29, 1976 | — |
| 59. | Annual Report 1975 | March 31, 1976 | Not applicable |
| 60. | Report on Changes of Name | August 16, 1976 | *The Vital Statistics Amendment Act, 1978*, S.O. 1978, c. 81, s. 1 (partial implementation) |
| 61. | Report on the Impact of Divorce on Existing Wills | February 28, 1977 | *The Succession Law Reform Act, 1977*, S.O. 1977, c. 40, s. 17(2) |
| 62. | Annual Report 1976 | March 31, 1977 | Not applicable |
| 63. | Annual Report 1977 | March 31, 1978 | Not applicable |
| 64. | Report on Sale of Goods | March 30, 1979 | — |
| 65. | Annual Report 1978 | March 30, 1979 | Not applicable |
| 66. | Report on Products Liability | November 16, 1979 | — |
| 67. | Annual Report 1979 | March 31, 1980 | Not applicable |
| 68. | Report on the Enforcement of Judgment Debts and Related Matters, Part I | February 20, 1981 | — |
| 69. | Report on the Enforcement of Judgment Debts and Related Matters, Part II | March 31, 1981 | — |

| | Title | Date of Report | Original Legislation Concerning Commission Proposals |
|---|---|---|---|
| 70. | Report on the Enforcement of Judgment Debts and Related Matters, Part III | March 31, 1981 | — |
| 71. | Annual Report 1980-81 | March 31, 1981 | Not applicable |
| 72. | Report on Witnesses Before Legislative Committees | September 11, 1981 | — |
| 73. | Report on Class Actions | March 31, 1982 | — |
| 74. | Annual Report 1981-82 | March 31, 1982 | Not applicable |
| 75. | Report on the Enforcement of Judgment Debts and Related Matters, Part IV | March 31, 1983 | — |
| 76. | Report on the Enforcement of Judgment Debts and Related Matters, Part V | March 31, 1983 | — |
| 77. | Report on Powers of Entry | March 31, 1983 | — |

Many of the Commission's earlier reports are no longer in print. Those that are still in print may be ordered from Publications Services, Ministry of Government Services, 5th Floor, 880 Bay Street, Toronto, Ontario, Canada M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540; in area code 807, 0-Zenith 67200.

## APPENDIX C

### OFFICERS AND PERMANENT STAFF
### ONTARIO LAW REFORM COMMISSION

| | |
|---|---|
| Chairman | Derek Mendes da Costa, Q.C., LL.M., S.J.D., LL.D. |
| Vice Chairman | H. Allan Leal, Q.C., LL.M., LL.D., D.C.L. |
| Commissioners | Honourable Richard A. Bell, P.C., Q.C.<br>William R. Poole, Q.C.<br>Barry A. Percival, Q.C. |
| Counsel | M. Patricia Richardson, M.A., LL.B. |
| Secretary and Administrative Officer | Miss A.F. Chute |
| Senior Legal Research Officer | M.A. Springman, M.A., M.Sc., LL.B. |
| Legal Research Officers | Eric Gertner, LL.B., B.C.L. (Oxon)<br>Ann M. Merritt, B.A., LL.B.<br>Larry M. Fox, LL.B.<br>Pamela M. Gibson, B.A., LL.B. |
| Administrative Assistant | Mrs. B.G. Woodley |
| Secretary to Chairman | Mrs. Stephanie Hlynka |
| Secretary to Vice Chairman | Elizabeth Page |
| Secretary to Counsel | Mrs. D.M. Halyburton |
| Secretary to Administrative Officer | |
| Secretaries to Legal Research Officers | Mrs. Cora Calixterio<br>Ms. V. Van Asperen, B.Sc. |
| Receptionist | Miss Mary M. O'Hara |